

Brexit: Implications for Local Government

Key issues

This briefing explores the implications of the UK vote to leave the EU. Specifically we explore:-

- What 'Brexit' will mean for local authority trading companies, procurement, environmental protection issues, municipal energy and workforce matters as well as budgets and investment matters such as housing.
- As further details emerge on the negotiations APSE will provide additional briefings to its' member authorities.

1. Brexit: what happens next?

Following the referendum vote the political fall-out has been dramatic leading to David Cameron's resignation as Prime Minister. This means that article 50 of the Lisbon Treaty, which is the route to trigger an exit from the EU by any member state, is highly unlikely to commence until a new Prime Minister has been appointed (by Her Majesty the Queen). In accordance with Parliamentary Protocol this means the majority party, the Conservative Party, will elect a new leader who will then be presented as the Prime Minister; It is possible that calls for this to trigger a General Election will gain traction but so far this is by no means a certainty. If the new PM is 'appointed' then that person will be responsible for the initial trigger of Article 50. The EU could not force the trigger of Article 50 on the UK.

Article 50 is as follows:-

1. *Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.*
2. *A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.*

3. *The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.*
4. *For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.*
5. *A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.*
6. *If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.*

Accordingly from the point of Article 50 being triggered there will be a two year negotiation period, though this could be extended by agreement of the member states. In addition the Chancellor, George Osborne, has indicated that there would be no trigger under Article 50 until there is agreement about the outline of negotiations so in reality the two year timescale may be in fact much longer, allowing for the pre-negotiation period.

2. What will be negotiated?

Primarily the EU will remain a major trading bloc with the UK and as such there will be on-going interdependencies on matters such as freedom of movement, financial services, border controls and security, defence and of course the importing and exporting of goods and services. Therefore many matters that apply to the UK as a member state may continue to apply in one form or another even after a negotiated exit.

The negotiations will, by necessity, include tariffs and trade-offs. Many commentators believe that the EU will be inclined towards a 'tough line' in negotiations to deter other EU member states from contemplating exiting the union. Equally however the UK is a significant trading state and will have its own strong hand to play in the negotiations.

3. What are the main issues for local authorities?

Local authorities have become used to navigating and complying with EU directives in the course of its' day to day business, specifically in areas such as public procurement and employment law. For the immediate future nothing will change and the EU has already made it clear that it expects the UK to be compliant with EU law during the course of the exit strategy.

On the 24 June EU President Donald Tusk (the presidency is currently held by the Netherlands) issued a statement which included the following:-

“Until this process of negotiations is over, the United Kingdom remains a member of the European Union, with all the rights and obligations that derive from this. According to the

Treaties which the United Kingdom has ratified, EU law continues to apply to the full to and in the United Kingdom until it is no longer a Member."

Therefore in the short term there will be no slackening of compliance requirements and in any event many issues of compliance may remain in order to ensure the UK's position as a future member of the European Economic Area. The following provides a summary of issues across different areas of local government activity.

Procurement rules (including local authority trading companies)

There are the three sets of procurement Regulations including Public Procurement, Utilities and Concessions which will continue to apply across the UK (including Regulations recently brought into force in Scotland by the Scottish Government). APSE has already received a query from a member authority about what the exit vote will mean for 'Teckal companies', whereby external trading is limited to 20% by the EU Public Procurement Directive. The immediate answer is that nothing will change and in the longer term it will be a matter for UK Governments to decide whether or not they would wish to continue with regulations over public procurement matters, including public to public cooperation arrangements. Indeed these matters are also likely to form part of negotiations with the EU.

As the UK will want to ensure access to EU markets, as part of any future membership of the European Economic Area, or a free trade agreement, it is therefore highly unlikely that public procurement will become de-regulated, since the EU is likely to insist on the continuation of many of the regulatory measures. In any event the EU measures have been incorporated largely into domestic legislation so whilst there may be a need to update, to reflect the changing dynamics, it is unlikely that there would be a total dismantling of the procurement regime.

In addition there are also other areas of international regulation to which the UK is currently a signatory such as World Trade Organisation agreements on procurement. It is also unclear where the UK will place its' position on the issue of the Transatlantic Trade and Investment Partnership (TTIP). It is perfectly possible for the UK to attempt to continue as a party to TTIP outside of the EU, albeit TTIP has been a highly controversial matter for the UK and other EU countries.

Post the negotiations it is possible a very complex set of procurement rules will apply as part of the trading arrangements, and incorporation of new regulations, to ensure compliance with whatever is agreed within UK law. Consideration will also need to be given as to how these take effect in all four UK administrations.

Environmental regulations

Waste and recycling: Many APSE member councils are proactive advocates for better waste management and disposal. The EU is credited with driving forward and advancing

recycling and waste management matters, and much of the UK legislation on waste and recycling was developed to reflect EU Directives. However there is cross-party political support within the UK on waste reduction, effective waste management, disposal and recycling so it is unlikely that current targets, for example on recycling, will be reduced or lessened. Indeed some UK administrations have already gone further than required by EU regulation, for example the zero waste targets within Scotland. However where our primary regulations relate back to EU matters then some legal amendments will be necessary to major pieces of UK legislation such as the *Environmental Protection Act 1990* which is a point of reference for many waste matters. In addition the aims and endeavours of the TEEP regulations will be an interesting point as to whether TEEP will be fully **embraced in the absence of a 'push' from the EU.**

Weed controls and chemicals: Many Parks and Public realm managers will be aware of EU compliance measures on weed control and the use of specific chemicals, including the ongoing debate on the use of glyphosate. Again whilst the source of regulations may emanate from the EU it is highly unlikely that there will be any realistic demands for deregulation of what is largely seen as public interest protection measures. Britain has shed its **'dirty man of Europe' label through vigorous pursuit across measures to improve environmental quality** and there will be little support or appetite amongst policy makers to travel backwards on environmental policies.

Carbon reduction: Whilst there are European targets on climate change and emission reduction targets the UK has its own Climate Change Act 2008, and is also a signatory to the Kyoto Protocol (since 1995) as well as many other domestic and international carbon reduction commitments. Again given the global nature of environmental matters it is unlikely that we would see a lessening of targets. By the UK maintaining its commitment on climate change matters these are reciprocated by other countries, EU or otherwise, and as such the UK would remain a beneficiary of reciprocal arrangements.

Housing and construction

Recent APSE and TCPA research on housing suggests that the UK needs to reach at least 250,000 new homes each year for sale or rent to meet housing demands (which could rise to 330,000 new homes should new house-building be delayed). So far the UK housing need is predominantly being met by private house builders and developers, with APSE calling for a much stronger role for local councils in building new council homes.

In the immediate aftermath of the referendum vote a number of housing developers saw their shares values slump, rapidly declining by around 25%. Any pull on the share values of developers could make the UK a less attractive investment option and hence create a lessening of new build schemes and projects. This will be unhelpful to local authorities (and Combined Authorities) in terms of housing strategy and housing developments. Whilst this situation may stabilise once markets recover, in the realisation that the immediacy of

Brexit will be a managed and negotiated process, it will nevertheless make the housing and construction market nervous.

In *'Homes for All: Ensuring councils can deliver the homes we need'* APSE has explored the development of wholly owned local housing companies which have some significant advantages for local authorities, in terms of the speed by which new developments can be delivered, and sharing of risk. An APSE event exploring options for delivering new homes including local housing companies, owned by local authorities will be held in [Leicester on the 8th July](#).

APSE would urge councils to take all necessary measure to continue to develop solutions to housing need in local areas.

Energy

APSE Energy works with local authorities on the municipalisation of energy markets with a focus on renewable energy and income generation from renewable energy. It also provides support and guidance on energy efficiency measures.

In terms of energy markets it is too early to say what the likely implications of Brexit will be but APSE Energy will be keeping a watchful eye on whether the UK chooses to remain within the Internal Energy Market. Europe has been pushing for greater transparency and regulation in the energy markets but many UK local authorities remain concerned about levels of fuel poverty amongst households. Accordingly, an increasing number of local authorities, have taken matters into their own hands by developing ESCOs (local authority energy services companies). Any new regulatory requirements, at a domestic level, should **therefore in APSE's view maximise the flexibility for local authorities to create and embed local energy solutions.**

Targets, such as 15% of energy coming from renewables under the EU Renewable Energy Directive are likely to remain. Indeed this issue was stated as the remaining intention of Government even when domestic changes to renewable tariffs and tops ups were introduced in 2015 and in early 2016.

Workforce matters

A range of matters will impact upon workforce issues as many domestic employment matters emanate from the EU. That being said it would be wrong to imply that there is co-dependency on the EU as, even where legislation has been drawn down from the EU, it has largely been brought into domestic law by way of Acts of Parliament. It would therefore need to be withdrawn domestically which would be unacceptable to many on a cross-party basis. Where employment rights are potentially weakened is where there is an appeal to the European Courts on points of interpretation, with reliance on the original wording in the specific EU directive. In the longer term however it is likely that pressure will build from

industry on the arguments of 'employment red tape' and it will be essential to have a mature debate on the necessity and impact of employment matters rather than a reactionary approach.

A key area of impact will be on freedom of movement and EU labour laws allowing EU workers to work across member states. Whilst employers are already obligated to make checks on the status of workers we may see a tightening of requirements, post exit, and dependent upon what form worker movement takes. Retaining some freedom of movement is highly likely as part of the European Economic Area (EEA) and therefore new compliance measures on employers, including local councils as employers, will be inevitable. For now however there are no immediate changes on the horizon.

APSE comment and conclusions

APSE would suggest that unless otherwise directed local authorities should continue with their existing compliance measures and should not assume any lessening of the risk of challenge for non-compliance on EU matters.

There are some emerging concerns on matters such as the EU infrastructure funding for large scale projects, such as HS2 and transport projects, alongside the possibility of further fiscal tightening, should the economy start to rapidly contract as a result of Brexit. Additionally concerns have been raised as to the future financing of Combined Authorities and City Deals. However the Chancellor has stated (on the 27 June 2016) that there will not be an emergency budget for the time-being; local authorities will however no doubt be nervous of any future funding challenges presented as a result of the EU vote.

APSE is also concerned that the negotiations surrounding the UK exit should not be conducted in a vacuum. Interested parties across the economy should have the opportunity to voice their concerns or demands of Government before decisions are made, both in the pre-Article 50 period and post the formal Article 50 trigger. APSE would urge the formation of a cross sector local government forum to ensure, that as well as strategic matters for local government, the interests of those providing frontline local government services are effectively represented. APSE would wish to avoid local councils ending up with unintended consequences for local council services.

Over the coming months, and as matters develop further, APSE will be informing and advising our member councils through our advisory groups, commercialisation network and regional events of developments in the negotiations. We would also be pleased to receive comments, questions and suggestions from our member local councils about specific matters so that we can investigate these points further and formulate a response as issues emerge. Please email mbaines@apse.org.uk with your suggestions.

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